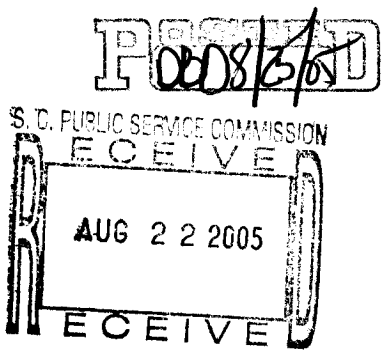
175376



August 19, 2005

The Honorable Charles L.A. Terrini
Chief Clerk & Administrator
Public Service Commission of South Carolina
101 Executive Center Dr.
Columbia, SC 29210

2005-254-E

Re: ***REQUEST FOR HEARING AND REVIEW RELATING TO SPECIAL PURPOSE DISTRICTS' RIGHT TO MUNICIPAL POWER RATE***

Dear Mr. Terreni:

I am the principal of Edison Reviews LLC, a corporation formed in South Carolina. I am an independent electricity analyst that works with businesses throughout South Carolina to find areas of savings on their electricity bills. I was a principal owner of UtiliCheck LLC which originally began operations in 2001.

Presently, I focus the majority of my attention on electricity issues of municipalities, water and sewer authorities, as well as special purpose districts. In my analysis of the rights and authority assigned to special purpose districts by the State of South Carolina, I have discovered an area of the law that should by interpretation, entitle a special purpose district the right to use the municipal power rate of the power/gas provider operating within their boundaries.

Please refer to the attached Informal Opinion by the Office of the Attorney General on March 18, 1996. This Opinion has been used to substantiate a Special Purpose district's right to participate as a political subdivision of the State of South Carolina with all rights and entitlements thereof. CF., Ops. Att'y Gen. Nos. 85-36 and Nos. 84-132. This can be referenced on page 2 of the Opinion.

Pursuant to South Carolina code of law, please reference:

> **SECTION 4-8-10. Special purpose district** defined. [SC ST SEC 4-8-10]
>
> As used in this chapter, "**special purpose district**" means any district created by an act of the General Assembly or pursuant to general law and which provides any local governmental service or function including, but not limited to, fire protection, sewerage treatment, water distribution, and recreation. "Special purpose district" also means any rural community water district authorized or created under the provisions of Chapter 13 of Title 6. Special purpose district does not include any state agency, department, or commission.

SECTION 6-13-10. Authority to establish and functions of water districts. [SC ST SEC 6-13-10]

Rural community water district authorized or created under this chapter as "special purpose district" authorized to participate in consolidation of political subdivisions, see §§ 4-8-10, 4-8-20.

The authority for local government is summarized in article 8, section 17, which provides that

> "all laws concerning local government shall be liberally construed in their favor. Powers, duties, and responsibilities granted local government subdivision by this constitution and by law shall include those fairly implied and not prohibited by this Constitution."

It is my contention that special purpose districts are political subdivisions of the state as well as of the county and/or municipality in which they operate. Therefore, they should be legally entitled to qualify for the municipal power rate offered by the power provider(s) residing within their boundaries. In the event that the Commission does not find that Special Purpose Districts are entitled to qualify for the Municipal Power Rate then they should qualify for the State Rate.

Based on several areas of law relating to the State's treatment of a Special Purpose District, I formerly request that the Public Service Commission would review these attached documents as well as any other documents that may relate to this issue in order to determine a formal position in this matter. Further, I request a public hearing as well as a published Finding of Fact in this matter. I will glad to work with your officials in this matter and I am anxious to clarify this matter on behalf of businesses operating within the State of South Carolina.

Kindest Regards,

Hollie C. Davis

The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

March 18, 1996

George B. Adams, Executive Manager
Little River Water & Sewerage Company, Inc.
Post Office Box 68
Little River, South Carolina 29566-0068

RE: Informal Opinion

Dear Mr. Adams:

By your letter of February 20, 1996, to Deputy Attorney General Zeb Williams, you have sought an opinion as to whether S.C. Code Ann. §6-5-10 (1976 & 1995 Cum. Supp.), pertaining to authorized investments of political subdivisions of this State, would constrain the Little River Water & Sewerage Company, Inc., in exercising the provisions of S.C. Code Ann. §33-35-80(12).

Little River Water & Sewerage Company, Inc., is a nonprofit corporation organized pursuant to S.C. Code Ann. §33-35-10 et seq. Your company has sought and obtained authority to participate in several programs applicable to political subdivisions, in particular the authorization to purchase under state contracts awarded by the Budget and Control Board Division of General Services; the provision of insurance coverage by the Insurance Reserve Fund; the issuance of permanent "RG" license plates for company-owned vehicles; and, pursuant to §9-1-470, the participation of company employees in the South Carolina Retirement System. You have further advised that the company files with the Secretary of State the biennial report required of special purpose districts by S.C. Code Ann. 6-11-1610 (1995 Cum. Supp.). The Local Government Debt Report compiled by the State Treasurer for the fiscal year ended June 30, 1992, lists the Little River Water & Sewerage Company as a special purpose district in Horry County.

The Office of the Attorney General, in the issuance of opinions, is not authorized to make findings of fact, Op. Att'y Gen. dated December 12, 1983, and thus accepts as

true the facts as presented to this Office for the basis of preparing an opinion. It appears that on several occasions and by several different entities, the Little River Water & Sewerage Company has been determined to be a special purpose district. As a special purpose district, the company would also be considered a political subdivision of the State. Cf., Ops. Att'y Gen. Nos. 85-36 and 84-132. Thus, for purposes of this opinion, it is assumed that the company is a political subdivision of this State.

Powers of nonprofit corporations such as the Little River Water & Sewerage Company are found in, inter alia, S.C. Code Ann. §33-35-80. Of particular interest here is subsection 12 of that statute, which authorizes the company to:

> Purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge or otherwise dispose of and otherwise use and deal with, shares and other interests in, or obligations of, other domestic or foreign corporations, whether for profit or not for profit, associations, partnerships or individuals, or direct or indirect obligations of the United States, or of any other government, state, territory, governmental district, municipality, or of any instrumentality thereof.

The company's auditor has raised the question as to whether the statutes of South Carolina regarding allowable investments may also apply to the company, since the company qualifies for various state benefits and programs as a special purpose district. The statute governing authorized investments by political subdivisions is S.C. Code Ann. §6-5-10:

> (a) The governing body of any municipality, county, school district, or other local government unit or political subdivision and county treasurers may invest money subject to their control and jurisdiction:
>
> (1) Obligations of the United States and agencies thereof;
>
> (2) General obligations of the State of South Carolina or any of its political units;
>
> (3) Savings and Loan Associations to the extent that the same are insured by an agency of the federal government;
>
> (4) Certificates of deposit where the certificates are collaterally secured by securities of the type described in (1) and (2) above held by a third party as escrow agent or custodian, of a market value not less than the amount of the certificates of deposit so secured, including interest; provided, however, such collateral shall not be required to the extent the same are insured by an agency of the federal government.

> (5) Repurchase agreements when collateralized by securities as set forth in this section.
>
> (6) No load open-end or closed-end management type investment companies or investment trusts registered under the Investment Company Act of 1940, as amended, where the investment is made by a bank or trust company or savings and loan association or other financial institution when acting as trustee or agent for a bond or other debt issue of that local government unit, political subdivision, or county treasurer if the particular portfolio of the investment company or investment trust in which the investment is made (i) is limited to obligations described in items (1), (2), and (5) of this subsection, and (ii) has among its objectives the attempt to maintain a constant net asset value of one dollar a share and to that end, value its assets by the amortized cost method.
>
> (b) The provisions of this chapter shall not impair the power of a municipality, county, school district or other local governmental unit or political subdivision or county treasurer to hold funds in deposit accounts with banking institutions as otherwise authorized by law.
>
> (c) Such investments shall have maturities consistent with the time or times when the invested moneys will be needed in cash.

Also to be considered is another statute relative to investment of funds by political subdivisions, §6-5-40, which provides as follows:

> The provisions of this chapter are not in lieu of, but are supplementary to, existing analogous statutory authorizations relating to investments, all of which shall remain in full force and effect.

It is observed that §33-35-80(12) was adopted as a part of Act No. 1030 of 1964; hence, §33-35-80(12), relative to investments, was in existence when §6-5-10, a part of Act No. 438 of 1967, was adopted. Thus, it must be determined whether the provisions of the two statutes are analogous; if so, then the provisions of §6-5-10 would be supplementary to the provisions of §33-35-80(12) relative to investments.

To be analogous, the things being compared must bear some resemblance to each other. Irving v. Kerlow Steel Flooring Co., 25 F.Supp. 901 (D.N.J. 1938). The elements and purposes of each must be similar to be analogous. Allied Wheel Products, Inc. v. Rude, 206 F.2d 752 (6th Cir. 1953); Aerotec Industries of California v. Pacific Scientific Co., 381 F.2d 795 (9th Cir. 1967). Items that are analogous are susceptible of comparison

either in a general sense or in some specific detail. In Re Behm's Estate, 35 Misc.2d 630, 231 N.Y.S.2d 164 (1962).

Comparing the two statutes under consideration, both would allow investments in obligations of the United States and its agencies, obligations of the State of South Carolina, and obligations of political subdivisions of the State of South Carolina. Additionally, §33-35-80(12) would permit dealing with interests in or obligations of various corporations and associations, whereas §6-5-10(3) would permit investments in savings and loan associations to the extent that the same are insured by an agency of the federal government. Each statute contains other investments which are not found in the other statute, as well. Both statutes pertain to investments generally and are alike in some of the specific details; hence, I am of the opinion that the statutes could be said to be analogous.

Because the two statutes appear to be analogous, and further because §33-35-80(12) was in existence when §6-5-10 was adopted, then §6-5-10 would be supplementary to §33-35-80(12), pursuant to §6-5-40. To be "supplementary" means to be "[a]dded as a supplement; additional; being, or serving as, a supplement"; or that something supplementary "extends that which is already in existence, without changing or modifying the original." Swanson v. State, 132 Neb. 82, 271 N.W. 264, 268. Webster's Third New International Dictionary (1976) at page 2297 defines "supplementary" as "that is or is added as a supplement." That dictionary defines "supplement" as "something that ... makes an addition." Because the provisions of §6-5-40 specifically declare the provisions of Chapter 5 of Title 6 to be supplementary to, and not in lieu of, existing analogous statutory authorizations and further that all such statutory authorizations are to "remain in full force and effect," I am therefore of the opinion that the provisions of both statutes would be applicable to Little River Water & Sewerage Company, Inc.

This letter is an informal opinion only. It has been written by a designated Senior Assistant Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Senior Assistant Attorney General